

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

VICTOR WOODARD,

Plaintiff,

-against-

COMPLAINT

Captain R. SHANLEY and
Albert Prack, in their individual
capacities,
Defendants.

PRELIMINARY STATEMENT

1. This action seeks damages for plaintiff's confinement in a Special Housing Unit as a result of a Tier III prison disciplinary hearing at which plaintiff's due process right to a hearing disposition supported by "some evidence" of guilt was violated.
2. This action is brought under 42 U.S.C. Section 1983. The defendants' actions, as alleged herein, violated plaintiffs' rights as

protected by the Fifth and Fourteenth Amendments to the United States Constitution.

JURISDICTION

3. This action is brought pursuant to 28 U.S.C. Sections 1331 and 1343(a)(3) and (4).

PARTIES

4. Plaintiff Victor Woodard is an inmate in the custody of the New York State Department of Correctional Services. He is currently confined at Auburn Correctional Facility in Auburn, New York. The prison discipline hearing at issue herein was completed at Cotsackie Correctional Facility, on May 20, 2008, while plaintiff was confined at that facility.
5. Defendant Shanley was a correction captain at Cotsackie Correctional Facility, and served as the hearing officer for the plaintiff's Tier III disciplinary hearing in May, 2008.
6. Defendant Prack is currently the Director of the Department of Correctional Services' Special Housing/ Inmate Discipline Program.

On July 3, 2008, as Acting Director, Special Housing/ Inmate Discipline Program, he affirmed the disposition of plaintiff's May 20, 2008 hearing.

FACTS

7. On or about May 12, 2008 the Deputy Superintendent of Security (DSS) at Cocksackie Correctional Facility (Cocksackie) came into possession of an anonymous threatening letter.
8. The DSS reviewed the letter with Captain Raymond.
9. On May 12, 2008 Captain Raymond gave a copy of the anonymous letter to Senior Counselor M.E. Bailey. Captain Raymond asked Counselor Bailey to compare the handwriting in the anonymous letter with inmate handwriting samples from Guidance Unit files, in order to determine the author of the anonymous letter.
10. Captain Raymond further instructed Counselor Bailey to begin by reviewing writing samples of inmates from the D-3Housing Unit.
11. On May 15, 2008 Counselor Bailey wrote a misbehavior report alleging that plaintiff Woodard wrote the anonymous letter, and

charging him with violating rule 102.10, threats, and rule 104.11, demonstration. The misbehavior report stated in part that,

[A]fter reviewing approximately 12 Guidance files from D3 Division, I located inmate Woodard's handwriting. The handwriting sample from inmate Woodard's Guidance Unit file was similar and consistent to the anonymous letter. Capt. Raymond also reviewed the sample and concluded it's the same handwriting as the anonymous letter.

12. A Tier III prison discipline hearing was held on May 20, 2008, based on Counselor Bailey's misbehavior report.

13. Defendant Captain R. Shanley was the hearing officer at the hearing.

14. During the hearing plaintiff and defendant Shanley both viewed the anonymous threatening letter and two samples of plaintiff's handwriting that had been taken from his Guidance Unit file.

Plaintiff acknowledged having written two letters dated May 8 and

May 9, 2001, but he unequivocally denied having written the anonymous threatening letter.

15. The hearing record does not contain, and defendant Shanley did not review, the other inmate writing samples reviewed by Counselor Bailey.
16. During the hearing plaintiff and defendant Shanley disagreed as to whether plaintiff's acknowledged handwriting was similar to, or matched, the handwriting in the anonymous threatening letter.
17. Plaintiff stated that his handwriting was not the same as the handwriting in the anonymous letter.
18. In particular, plaintiff stated that the letter "t" was different in his letters compared to the anonymous letter.
19. Defendant Shanley stated that the word "Today" at the beginning of the threatening letter, and the phrase "To whom it may concern" at the beginning of one of plaintiff's acknowledged letters, were similar with respect to the letters "t," "o," "w," and "e." Defendant

Shanley also stated that he felt the letters “m” and “a” were similar in the threatening letter and plaintiff’s handwriting samples.

20. Plaintiff stated that his “a” was smaller than the “a” in the threatening letter.

21. Defendant Shanley observed that some of plaintiff’s “a”s were larger and some smaller. Defendant Shanley also felt that plaintiff’s “r”s, “w”s, and “l”s were the same as those in the threatening letter.

22. Defendant Shanley called Captain Raymond as a witness at the hearing. Captain Raymond testified that he had compared the anonymous threatening letter to documents from plaintiff’s Guidance Unit file, and that he concluded plaintiff wrote the threatening letter.

23. At the conclusion of the hearing defendant Shanley found plaintiff guilty of making threats, not guilty of demonstration, and imposed a penalty including 365 days disciplinary confinement in a Special Housing Unit (SHU), and two months recommended loss of good time.

24. On or about May 21, 2008 plaintiff submitted an administrative appeal of his hearing disposition in which he argued, in part, that, “The hearing officer’s determination that I authored the anonymous letter is not supported by any evidence...”
25. Plaintiff submitted supplemental administrative appeals on May 22, June 6, and June 15, 2008.
26. On July 3, 2008 defendant Prack affirmed the disposition of plaintiff’s hearing in his role as Acting Director of the Department of Correctional Services’ Special Housing/ Inmate Discipline Program.
27. On or about August 18, 2008 plaintiff commenced an Article 78 proceeding in Albany County Supreme Court.
28. The Article 78 was transferred to the Appellate Division, Third Department because it raised an issue of substantial evidence.
29. On July 2, 2009 the Appellate Division, Third Department issued a Memorandum and Judgment affirming the disposition of plaintiff’s discipline hearing, and dismissing the petition.

30. Plaintiff then made a motion for leave to appeal to the New York State Court of Appeals.

31. On October 22, 2009 the New York State Court of Appeals granted leave to appeal.

32. On April 9, 2010, while the appeal of plaintiff's discipline hearing was pending before the New York State Court of Appeals, the hearing disposition was administratively reversed and expunged.

33. Plaintiff suffered a deprivation of a constitutionally protected liberty interest, while in disciplinary confinement as a direct result of the May 20, 2008 hearing, from May 12, 2009 until April 24, 2010, a period of 347 days.

34. Plaintiff has exhausted his administrative remedies.

CAUSE OF ACTION

35. Defendants have deprived plaintiff of a liberty interest protected by the due process clause of the Fifth and Fourteenth Amendments

to the Constitution by finding plaintiff Woodard guilty of misbehavior without sufficient evidence to support the charge.

WHEREFORE plaintiff requests that this Court:

1. Declare that the acts set forth herein are in violation of plaintiff's rights under the Federal Constitution;
2. Enter judgment in favor of plaintiff for reasonable actual and compensatory, including consequential, damages against defendants Shanley and Prack, jointly and severally, to compensate plaintiff for the loss of liberty and other hardships arising from defendants' actions in violation of his rights;
3. Award plaintiff the costs of this action, including reasonable attorney's fees; and
4. Grant such other and further relief as the Court deems just and proper.

Dated: September 17, 2010

/s James M. Bogin

James M. Bogin

Bar Roll No. 101174

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